

### **REMARKS**

This responds to the Office Action dated May 9, 2006.

Claim 1 is amended; as a result, claims 1-11 are now pending in this application.

#### **§112 Rejection of the Claims**

Claim 1 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention because it is unclear how the first TO can and the second TO can are connected to each other.<sup>1</sup> Claims 2-5 were rejected due to their dependency on claim 1. Claim 1 was amended to respond to the rejection and to better recite the subject matter.

Applicant respectfully requests reconsideration and allowance of claims 1-5.

#### **§103 Rejection of the Claims**

Claims 1-5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ito et al. (U.S. Pat. 6,948,863, "Ito") in view of Narayan et al. (U.S. Pat. 6,860,652, "Narayan").

Applicant respectfully traverses the rejection.

The Office Action states that Ito alone does not disclose all of the elements of the claims at issue.<sup>2</sup> Naryan is not prior art. As a prior art reference, Narayan would be applied under 35 U.S.C. § 102(e). Narayan and the invention of the present application were owned by the same person or subject to an obligation of assignment to the same person at the time the invention was made. Therefore, 35 U.S.C. § 103(c) disqualifies Narayan as prior art under 35 USC § 103.

Applicant respectfully requests withdrawal of the rejection and reconsideration and allowance of claims 1-5.

Claims 6-11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Epitiaux et al. (U.S. Pat. Publ. 2004/0021217, "Epitiaux") in view of Narayan. Applicant respectfully traverses the rejection.

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<sup>1</sup> Office Action, pg. 2.

<sup>2</sup> Office Action, pg. 3.

The Office Action states that Epitax alone does not disclose all of the elements of the claims at issue.<sup>3</sup> Naryan is not prior art. As a prior art reference, Narayan would be applied under 35 U.S.C. § 102(e). The present application and Narayan were owned by the same person or subject to an obligation of assignment to the same person at the time the invention claimed in the present application was made. Therefore, 35 U.S.C. § 103(c) disqualifies Narayan as prior art under 35 USC § 103.

Applicant respectfully requests withdrawal of the rejections and reconsideration and allowance of claims 6-11.

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<sup>3</sup> Office Action, pg. 5.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney ((612) 371-2172) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 31st day of July, 2006.

Name Amy Moriarty

Signature g3